

**232.44 DETENTION OR SHELTER CARE HEARING -- RELEASE
FROM DETENTION UPON CHANGE OF CIRCUMSTANCE.**

1. A hearing shall be held within forty-eight hours, excluding Saturdays, Sundays, and legal holidays, of the time of the child's admission to a shelter care facility, and within twenty-four hours, excluding Saturdays, Sundays, and legal holidays, of the time of a child's admission to a detention facility. If the hearing is not held within the time specified, the child shall be released from shelter care or detention. Prior to the hearing a petition shall be filed, except where the child is already under the supervision of a juvenile court under a prior judgment.

If the child is placed in a detention facility in a county other than the county in which the child resides or in which the delinquent act allegedly occurred but which is within the same judicial district, the hearing may take place in the county in which the detention facility is located. The child shall appear in person at the hearing required by this subsection.

2. The county attorney or a juvenile court officer may apply for a hearing at any time after the petition is filed to determine whether the child who is the subject of the petition should be placed in detention or shelter care. The court may upon the application or upon its own motion order such hearing. The court shall order a detention hearing for a child waived under section 232.45, subsection 7, at the time of waiver.

3. A notice shall be served upon the child, the child's attorney, the child's guardian ad litem if any, and the child's known parent, guardian, or custodian not less than twelve hours before the time the hearing is scheduled to begin and in a manner calculated fairly to apprise the parties of the time, place, and purpose of the hearing. In the case of a hearing for a child waived for prosecution as a youthful offender, this notice may accompany the waiver order. If the court finds that there has been reasonably diligent effort to give notice to a parent, guardian, or custodian and that the effort has been unavailing, the hearing may proceed without the notice having been served.

4. At the hearing to determine whether detention or shelter care is authorized under section 232.21 or 232.22 the court shall admit only testimony and other evidence relevant to the determination of whether there is probable cause to believe the child has committed the act as alleged in the petition and to the determination of whether the placement of the child in detention or shelter care is authorized under section 232.21 or 232.22. At the hearing to determine whether a child who has been waived for prosecution as a youthful offender should be released from detention the court shall also admit evidence of the kind admissible to determine bond or bail under chapter 811, notwithstanding section 811.1. Any written reports or records made available to the court at the hearing shall be made available to the parties. A copy of the petition or waiver order shall be given to each of the parties at or before the hearing.

5. The court shall find release to be proper under the following circumstances:

a. If the court finds that there is not probable cause to believe that the child is a child within the jurisdiction of the court under this chapter, it shall release the child and dismiss the petition.

b. If the court finds that detention or shelter care is not authorized under section 232.21 or 232.22, or is authorized but not warranted in a particular case, the court shall order the child's release, and in so doing, may impose one or more of the following conditions:

(1) Place the child in the custody of a parent, guardian or custodian under that person's supervision, or under the supervision of an organization which agrees to supervise the child.

(2) Place restrictions on the child's travel, association, or place of residence during the period of release.

(3) Impose any other condition deemed reasonably necessary and consistent with the grounds for detaining children specified in section 232.21 or 232.22, including a condition requiring that the child return to custody as required.

(4) In the case of a child waived for prosecution as a youthful offender, require bail, an appearance bond, or set other conditions consistent with this section or section 811.2.

c. An order releasing a child on conditions specified in this section may be amended at any time to impose equally or less restrictive conditions. The order may be amended to impose additional or more restrictive conditions, or to revoke the release, if the child has failed to conform to the conditions originally imposed.

6. If the court finds that there is probable cause to believe that the child is within the jurisdiction of the court under this chapter and that full-time detention or shelter care is authorized under section 232.21 or 232.22 or that detention is authorized under section 232.23, it may issue an order authorizing either shelter care or detention until the adjudicatory hearing or trial is held or for a period not exceeding seven days, whichever is shorter. However, in the case of a child placed in detention under section 232.23, this period may be extended by agreement of the parties and the court.

7. If a child held in shelter care or detention by court order has not been released after a detention hearing or has not appeared at an adjudicatory hearing before the expiration of the order of detention, an additional hearing shall automatically be scheduled for the next court day following the expiration of the order. The child, the child's counsel, the child's guardian ad litem, and the child's parent, guardian or custodian shall be notified of this hearing not less than twenty-four hours before the hearing is scheduled to take place. The hearing required by this subsection may be held by telephone conference call.

8. A child held in a detention or shelter care facility pursuant to section 232.21 or 232.22 under order of court after a hearing may be released upon a showing that a change of circumstances makes continued detention unnecessary.

9. A written request for the release of the child, setting forth the changed circumstances, may be filed by the child, by a responsible adult on the child's behalf, by the child's custodian, or by the juvenile court officer.

10. Based upon the facts stated in the request for release the court may grant or deny the request without a hearing, or may order that a hearing be held at a date, time and place determined by the court. Notice of the hearing shall be given to the child and the child's custodian or counsel. Upon receiving evidence at the hearing, the court may release the child to the child's custodian or other suitable person, or may deny the request and remand the child to the detention or shelter care facility.

11. This section does not apply to a child placed in accordance with section 232.78, 232.79, or 232.95.

Section History: Early Form

[C79, 81, § 232.44; 82 Acts, ch 1209, § 9, 10]

Section History: Recent Form

87 Acts, ch 149, §5; 94 Acts, ch 1172, §16, 17; 95 Acts, ch 67, §
15; 97 Acts, ch 126, §19
Referred to in § 232.9, 232.11, 232.22, 232.23, 232.45

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